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amendment and, ask unanimous consent that the amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 494

On page 71, line 24, strike out "\$3,368,802,000" and insert in lieu thereof "\$3,361,102,000".

On page 17, line 25, strike out "\$3,707,840,000" and insert in lieu thereof "\$3,605,840,000".

On page 18, between lines 3 and 4, insert a new section as follows:

"Sec. 202. None of the funds authorized to be appropriated by this Act, including funds authorized to be appropriated under title VII, may be used to conduct any research, development, testing, or evaluation in connection with—

"(1) improved guidance technology for the Minuteman III missile system;

"(2) the Mark 12A Reentry Vehicle;

"(3) Maneuverable Reentry Vehicle (MARV) precision guidance technology in the Advanced Ballistic Reentry System (ABRES);

"(4) the Large Advanced Ballistic Reentry Vehicle (LABRV) in the Advanced Ballistic Reentry System (ABRES); or

"(5) improved accuracy for the Fleet Ballistic Missile System."

On page 24, line 7 through 8, strike out "\$851,363,000" and insert in lieu thereof "\$849,463,000".

On page 24, line 9, strike out "\$946,621,000" and insert in lieu thereof "\$914,821,000".

AMENDMENT NO. 496

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY (for himself and Mr. CRANSTON) submitted an amendment intended to be proposed by them jointly to the bill (S. 920), supra.

FAIR MARKETING OF PETROLEUM PRODUCTS ACT—S. 323

AMENDMENT NO. 493

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS. Mr. President, today I am submitting an amendment to S. 323, the proposed Fair Marketing of Petroleum Products Act.

Section 4(b) now reads as follows:

A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a petroleum products franchise unless the person whose franchise is terminated failed to comply substantially with any *essential* and reasonable requirement of such petroleum products franchise or failed to act in good faith in carrying out the terms of such petroleum products franchise, or unless such refiner or distributor withdraws entirely from the sale of refined petroleum products in commerce for sale other than resale in the United States. (Emphasis supplied.)

Under my amendment the words "essential and" would be deleted from this section, permitting the cancellation or termination of a franchise when there has not been substantial compliance by the franchisee with any reasonable requirement of the franchise. Cancellation would not require that an "essential" requirement of the franchise had not been met.

In my view, this wording strikes a fair balance between the interests of the franchisee and the distributor. If can-

cellations are limited to those circumstances in which "essential" requirements of the franchise agreement have been violated, then large parts of any franchise agreement will be rendered meaningless. By limiting cancellation to those situations in which "reasonable" requirements have not been met, we will protect the retail dealer from termination for trivial reasons, but without imposing an undue burden on the distributor. Our goal should be fairness in dealings between retailers and distributors; we should not seek to give one the advantage over the other in their contractual arrangements.

WATERGATE REORGANIZATION AND REFORM ACT—S. 495

AMENDMENT NO. 495

(Ordered to be printed and referred to the Committee on Government Operations.)

Mr. PERCY. Mr. President, with the cosponsorship of Senator BAKER and after a year's staff research and study, I am today submitting an amendment to S. 495, the Watergate Reorganization and Reform Act.

Many of the crimes and abuses which fell beneath the umbrella label of "Watergate" were associated with the practice of electronic eavesdropping and wiretapping. The tapping of newsmen and executive employees by the "White House Plumbers," the clandestine tape recording of White House conversations both in the Oval Office and over White House telephones, as well as the actual attempted bugging of the Democratic National Headquarters at the Watergate Hotel complex, are all prime examples of the sorts of invasions of privacy now rendered frighteningly simple by modern technology. In this sense, the Watergate scandals and so-called "White House horrors" were symptomatic of something more than the simple abuse of power. Rather, they must be viewed as part of a larger question facing American society today, that of technology run rampant.

It is the intent of the Watergate reform bill to establish effective preventive measures to help insure that this Nation is not subjected to more than one Watergate. This amendment would further effectuate that goal by dealing with the problem of electronic eavesdropping and wiretapping which was at the very heart of the Watergate scandals.

The amendment that I am submitting today attempts to deal with the problem of clandestine electronic snooping. The approach is essentially threefold: First, regulation of the manufacture, distribution, and possession of the devices themselves; second, tightening of the applicable law so as to require notice to or consent of all parties to a conversation before it may legally be electronically or mechanically overheard or recorded, except in those cases where a judicial warrant has been obtained; and third, facilitation of the civil remedy in cases of illegal eavesdropping by insuring access by the potential plaintiff to the investigatory resources of law enforcement and the telephone companies. By thus limit-

ing the availability of electronic eavesdropping devices and further defining the rights of the victims of their abuse, it is my hope that this amendment will significantly lessen the now prevalent fear that no conversation is ever truly private.

Titles V through VII of the amendment create a regulatory system requiring the obtaining of a license in order to manufacture, import, sell, transfer, or possess an electrical or mechanical eavesdropping device. An eavesdropping "device," for the purpose of this section, is one of a narrowly defined type of device which can by its nature be used to intercept a wire or oral communication without the knowledge of all parties, and, in addition, is not primarily or ordinarily used for anything else. Section 201(3). Only those products which are created for the sole and primary purpose of surreptitious eavesdropping would fall under the purview of regulation. Thus while a simple everyday tape recorder would not fall under the definition, a disguised tin microphone specially designed to be able to pick up a conversation while in hiding would most certainly be subject to regulation.

The purpose of the regulation system is then a two-fold one of limiting the distribution of eavesdropping devices only to those who have a justifiable legal purpose for having them, and at the same time of creating a systematic means for keeping track of the device discovered in the course of an investigation, as well as that of its rightful owner.

The information gathering system will operate on a simple "chain of title" basis. Every device produced, manufactured, or imported must be in effect baptised for life with a nonerasable identification number. This number will then be placed on the head of a file. Any further sales, transfers, or other dispositions of the device will then be recorded in this same file.

At present, one of the single greatest roadblocks to effective enforcement of the wiretap laws is the inability of investigators to trace back a device which they have found to its actual owner. Under my legislation, if an investigator does in fact come up with such a device, it will be but a simple matter to check the number on the device, look up the file under that number, and discover the name of the manufacturer, the record of all sales and transfers of the device, and the name of its most recent owner.

For the purpose of limiting the actual distribution of the devices, of keeping them in the hands of responsible individuals with valid purposes for their use, two types of licenses will be issued by the Secretary of Commerce under the regulatory scheme; "business licenses" for those who wish to engage in the manufacture, assembly, importation, transfer, or sale of the devices, and "possessor licenses" for those who wish to own, possess, or actually use such devices. Both licenses will be limited to those who, upon application, can state a valid and lawful purpose for their particular dealings in eavesdropping devices. For the business license, the applicant must

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a concurrent resolution authorizing the Senate and House to appoint a Joint Committee on Arrangements for the Nation's Bicentennial Celebration.

As chairman of the American Revolution Bicentennial Board, I believe that the Congress should play a significant and substantive role in honoring the Nation's 200th birthday and assisting the American Revolution Bicentennial Administration by involving all of our citizens in this Bicentennial celebration.

The recent Bicentennial events in Lexington and Concord, Mass., are harbingers of the major commemorative activities which will be held throughout the country in the coming months. Because of the rapidity with which these events will be arriving, I believe it is essential that a Committee on Arrangements be appointed as soon as possible so that we may be able to begin coordinating events by the Fourth of July 1975 and continue through the historic period of the Fourth of July 1976.

It is certainly important that Congress be represented at many of the ceremonial events. But it is also important that the Congress establish definite plans that will determine its contribution as an institution to America's 200th birthday and which will also mark appropriately the role of the Congress as the representatives of the people.

The proposed joint committee would include the majority and minority leaders of the House of Representatives and of the Senate. In addition, the four members of the American Revolution Bicentennial Board would serve on the proposed joint committee because of their experience in dealing with all aspects of the Bicentennial. Current members of the ARBA Board, in addition to myself, include Senator JOSEPH MONTOYA, Representative GANDY BOGGS, and Representative M. CALDWELL BUTLER.

The Joint Committee on Arrangements would have three specific functions.

First, to develop and implement programs to inform and emphasize to the Nation the important role of the Congress as the representative of the people from its historic beginnings, antedating the Revolution, through 200 years of growth, challenge, and change.

Second, To coordinate such congressional programs with the activities and events planned and implemented by other governmental and nongovernmental groups.

Third, To consult with the Speaker of the House of Representatives and the President of the Senate to provide for representation of the Congress at appropriate Bicentennial ceremonies and events.

In my judgment the Congress has a vital obligation to play an important part in the Nation's Bicentennial. Its historic beginnings with the first meetings of the Continental Congress formed the foundation for the principles and practices of the current Congress of the United States. That foundation has supported the Congress in trying national crises: the War Between the States, the Depression of the 1930's, World War II, and the recent traumatic experience of a change in executive leadership. It is only fitting

and proper, therefore, that Congress role in these historic events be memorialized in the course of the Nation's 200th anniversary.

In this day of growing public distrust of the Government and our other national institutions, I think it essential that the story of the Congress of the United States as the representative of the people, be made known, especially to our young people. This story can be a fitting contribution to the Nation's 200th anniversary.

Mr. President, because section 5 of the Concurrent Resolution provides that "the expenses of the joint committee shall be paid from the contingent fund of the Senate," I believe that the resolution should also be referred to the Senate Committee on Rules and Administration.

Mr. MONTOYA. Mr. President, I am pleased to join Senator BROOKE in sponsoring the concurrent resolution to appoint a Joint Committee on Arrangements for the Commemoration of the Bicentennial of the United States.

Ours is a representative democracy. Those of us who are elected members of the government are here as representatives of the people of our States and of the people of this Nation.

That is as it should be, and as we want it to be.

As we enter the Bicentennial period we have a further opportunity to represent our constituency in honoring and celebrating our history and our form of government. No group of Americans should be more willing than we are to take part in the work of the American Revolution Bicentennial Administration. No group in the Nation should be more supportive of the efforts of constituents to make the Bicentennial a deep and meaningful experience.

It is very popular to say that there is a crisis of confidence in government today. It is true that for many months now we have heard serious criticisms of government, and doubts about the role of the various segments of government. However, I think it is important for all of us to remember that an ongoing analysis of the system is really the American way. We Americans have always been jealous of our ability to control government and proud of our success in making representative government work. That is true today, and it was true in 1776. Congress—from the time of the First Continental Congress right up to the time of this 94th Congress—has been the link between the citizen and his government.

I firmly believe the celebration of our Bicentennial is an opportunity for the Congress to once again renew and strengthen that link. The role we play in Bicentennial activities will be important to the future of this Nation. Our participation should include a report to the people on the history of the Congress itself, and on the future of representative government as we understand it.

The joint resolution we are submitting today will make it possible for the Congress to participate in Bicentennial activities to the fullest extent. It will facilitate coordination of our participation

so that no part of the Nation is neglected and no segment of the population is ignored. It will give Members of Congress assistance in scheduling and coordinating programs. I believe it will be an invaluable part of our congressional work during this Bicentennial year.

I urge the support of my colleagues for the establishment of this joint committee.

Mr. MANSFIELD subsequently said: Mr. President, I ask unanimous consent that the concurrent resolution submitted earlier today by the Senator from Massachusetts (Mr. BROOKE), for himself and other Senators, be referred jointly to the Committee on the Judiciary and the Committee on Rules and Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS SUBMITTED FOR PRINTING

DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1976—S. 920

AMENDMENTS NOS. 491 AND 492

(Ordered to be printed and to lie on the table.)

Mr. JACKSON submitted two amendments intended to be proposed by him to the bill (S. 920) to authorize appropriations during the fiscal year 1976, and the period of July 1, 1976, through September 30, 1976, for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense, and to authorize the military training student loans, and for other purposes.

AMENDMENT NO. 494

(Ordered to be printed and to lie on the table.)

Mr. MCINTYRE (for himself and Mr. BROOKE) submitted an amendment to be proposed by them, jointly, to the bill (S. 920) supra.

COUNTERFORCE AMENDMENT

Mr. MCINTYRE. Mr. President, I send to the desk an amendment to S. 920, the military procurement bill.

This amendment is submitted on behalf of the distinguished junior Senator from Massachusetts, Mr. BROOKE, and myself.

Its purpose is to deny funding for a group of five programs currently in the research and development stage that would drastically and dangerously alter our traditional nuclear strategy. These so-called counterforce programs will put a "hair-trigger" on nuclear war, and may hinder our efforts to meet national security requirements.

Mr. President, there will be considerable debate on this issue in the coming days, so I will say nothing further at this time. However, I did want my colleagues to have an opportunity to study this

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state fully his present and foreseeable activities in the area. For the possessor license, the applicant must state just what he intends to do with the device once it is in his hands. In addition, if after a hearing it is found that either applicant has been convicted of, or is likely to be engaged in, an eavesdropping-related offense, the Secretary will deny the license application.

Through this regulatory mechanism we will hopefully be able to separate responsible use from irresponsible, legitimate use from illegitimate, and based upon this knowledge, be able to limit the right to own or use such devices.

One example where such a system has been successfully put into practice is that of the State of Maryland. Maryland law requires manufacturers and possessors of eavesdropping equipment to register their devices. It further requires reports on all sales and transfers of such devices. Thus far, 71 devices have been registered to 10 persons and corporations. Though on a smaller scale, certainly the success of the Maryland experiment in this field demonstrates the feasibility and advantage of the system I propose today. In discussing his experience with the operation of the Maryland system, Superintendent Smith of the Maryland State Police concluded:

I would definitely favor the establishment of laws providing for the licensing of such (eavesdropping) equipment. * * * I would also favor the licensing of manufacturers of such devices.

Mr. President, title IX of my amendment tightens the Federal wiretap law by eliminating some of its more crippling weaknesses. The present state of the law with regard to eavesdropping and electronic bugging is just about as solid as a doughnut. The big gaping hole in the center to which I draw your specific attention is the "one party consent" exception. That is, the law specifically forbids the practice of warrantless interception of wire and oral communications unless one of the parties to the conversation has given his consent. This single party consent, so the law goes, can indeed be the eavesdropper himself. Such being the case, the rights of the other parties to a conversation against such eavesdropping are rendered a nullity.

The potentiality for abuse under this law is immense. Take, for example, the case of a Mr. Smith, who, after confiding to a friend one night over the telephone, woke up the next morning to find a verbatim transcript of the juicier parts of his conversation in the morning newspaper. His supposed friend, it seems, had taken the trouble of recording the entire conversation, without providing our Mr. Smith with any forewarning as to his actions or intentions. When Mr. Smith then sued his former friend and the newspaper, he lost. Because the conversation had been recorded by one of its participants, the tap was deemed perfectly legal under the one-party consent exception. Unfortunately, this was an actual case. *Smith v. Cincinnati Post and Times Star*, 353 F. Supp. 1126.

A more recent example of abuse under this exception to the law is seen in the famous White House tapes. While outrageous on its face, it was in fact perfectly legal for the former President to secretly tape record conversations in his Oval Office as well as over his telephones without warning or notice to other unaware parties to such conversations. The former President himself, in this case, was the single-party consentor. The fact that he knew about the presence of the taping system was in itself enough to guarantee legality as long as he was present, despite the fact that those whose words he recorded had no knowledge of the recording, nor had consented to it.

Title IX of my amendment puts a plug in the doughnut hole by amending the present 18 United States Code, section 2511 to require "the consent of all parties" to an interception committed without a judicial warrant of any wire or oral communication. This provision would provide assurance that no private conversation can be electronically or mechanically overheard or taped without either the consent of all parties to the conversation, or a judicial warrant authorizing such overhearing or taping.

It is not the intent of this provision to interfere with the ability of the police to conduct their investigations into alleged wrongdoing by means of electronic surveillance. Title 18 lays out in much detail a fair and effective mechanism for law enforcement officials to obtain warrants for such surveillance when the requisite probable cause and other criteria exist. It is the intention of this provision to prevent law enforcement from bypassing or circumventing the statutory safeguards through the use of the one-party consent exception, that is, to make the tapped telephone calls themselves, or via a collaborator, record the conversation, and then use the recording as court admissible evidence, all without the use of a warrant, without probable cause—all technically legal now. At present, a law enforcement official recording such a conversation would be a party to the conversation and, therefore, could consent to its interception. See *Commonwealth v. Murray*, 423 Pa. 37.

As a further attempt to tighten the reins against abuse of the wiretap and eavesdrop laws, my amendment sets forth specific sanctions against those who knowingly break the rules. The recent case of *United States v. Giordano*, 416 U.S. 505 (1974), which involved forged signatures of the Attorney General's name upon previously prepared surveillance authorizations, flying directly in the face of a statutory requirement, is a case in point. The exclusionary rule, no matter how diligently applied by the courts, is simply ill-equipped to deal with such high level chicanery. Only a direct sanction against the offending officer himself can fulfill this function. This is what my amendment attempts to do.

As an attempt to facilitate the ability of private individuals to bring their own civil actions in the event that they themselves are subject to an illegal eaves-

drop, two specific steps are taken. First, as a means of lightening the burden of proof, a standard is set by which any conviction of a defendant in a criminal proceeding brought against him on a charge concerning a violation of the wiretap laws will be regarded as conclusive in a civil proceeding brought against him regarding the same violation. Through this manner, the civil litigant will be able to benefit from the investigative and organizational resources of law enforcement, to ride on the prosecutor's coattails, so to speak. Second, an affirmative duty is placed on the telephone companies to aid their customers in investigating such offenses. Many of these companies do at the present follow a policy similar to that set down in my amendment. Some others, however, do not. The intention of this provision of my amendment is to make the practice uniform and mandatory.

This legislation would affect the phone company in a number of other ways as well. At present, there is no duty for a phone company to report a tap to the police which it has discovered on a customer's line. Although almost all phone companies do report such taps at present, an exception is Illinois Bell Telephone. This legislation would require phone companies to report the discovery of a tap to a law enforcement official.

In addition, phone companies are now allowed to secretly tape conversation when they believe that a fraud is being committed against the phone company. They do not have to prove probable cause; they do not have to get anyone's permission; they have a free hand in deciding whether a crime is being committed and whether a conversation should be recorded. This unbridled discretion is unparalleled. No other industry or private citizen has such discretion, and even the police have to obtain a court order before secretly recording conversations. This legislation would remove this discretion from the phone companies and make them seek the help of the police and the approval of a court if they suspect a crime is being committed. The police may seek a court order to intercept a conversation if the conditions for such a court order can be met. This will not hinder the phone companies since their technology is such that they can pretty well determine when a fraud is being committed, and thereby prove probable cause to a court. But, no longer would they be free to tape conversations whenever in their discretion they felt it was warranted.

The issues with which the amendment deals are important to us both as legislators and as individuals. As legislators, we must attempt to deal with a social problem which has of its own momentum played a large role in one of the greatest national catastrophes of our day. As individuals, we have at stake the quality of the environment in which we work, act, think, and communicate every day of our lives. Both of these responsibilities are weighty.

Mr. President, I ask unanimous consent that a statement by Senator BAKER be printed in the RECORD and that the amendment be printed in the RECORD.

There being no objection, the statement and amendment were ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR BAKER

I welcome the opportunity to join my distinguished colleague from Illinois (Mr. PERCY) in introducing this amendment to S. 495, the "Watergate Reorganization and Reform Act."

As I noted in my individual views for the Final Report of the Select Committee on Presidential Campaign Activities, "I believe that Congress should carefully consider a prohibition of the electronic recording of conversations . . . except with the prior consent of all the participants to the conversation, or unless carefully supervised by a court of competent jurisdiction for specified statutory purposes." I believe that S. 459, the Watergate Reorganization and Reform Act, provides a timely and appropriate vehicle for the Congress to consider such a prohibition of non-consensual electronic eavesdropping and wiretapping occurring without prior judicial approval; and I commend Senator Percy for his leadership in this area.

Certainly the single most notable evidentiary achievement of the Senate Watergate Committee was the revelation by Alexander Butterfield of the tape recording system utilized in both the Oval Office and the Presidential Suite in the Executive Office Building. I am not sure that I understand why the tape-recording facilities were installed; but I find the practice of recording conversations without the consent of all parties thereto, in the absence of a warrant, objectionable and not in keeping with the grandeur of the Fourth Amendment.

I further believe that this amendment is reflective of the sentiment of what I consider to be one of the most important recommendations of the Senate Watergate Committee. That is, the Select Committee on Presidential Campaign Activities in its Final Report recommended "that the appropriate committees of Congress study and reconsider Title III of the Omnibus Crime and Safe Streets Act of 1968 for the purpose of determining whether the electronic surveillance provisions contained in that Act require revision or amendment." In *United States v. U.S. District Court*, 407 U.S. 297 (1972), the Supreme Court pointedly invited Congress to decide whether prior judicial approval is required for all law-enforcement and intelligence surveillance; and the Watergate Committee so recommended. I recognize that legitimate law-enforcement and intelligence requirements often mandate such surveillance; but, in my opinion, when it is done within the United States, it is preferable that a warrant be obtained prior to implementation.

This amendment, of course, also would require regulation of electronic eavesdropping devices and makes clear civil remedies in cases of illegal eavesdropping. If we allow the manufacture and distribution of eavesdropping devices and wiretaps to continue unchecked, we may find that there may come a time at which no conversation, however private or personal, will be secure from the curious or the rampant opportunist.

I believe that the amendment which Senator Percy and I are introducing today reflects a serious attempt to eliminate what I consider to be perhaps the most objectionable abuse uncovered by the Select Committee on Presidential Campaign Activities, and I think that it reflects the concern under-

ing one of the major recommendations of the Senate Watergate Committee. It certainly is pertinent to the Watergate-prompted reform effort, and I commend it to my colleagues.

AMENDMENT No. 495

On page 37, line 15, add the following:
TITLE V—LICENSING OF ELECTRONIC, MECHANICAL, OR OTHER DEVICE

SEC. 501. As used in this title, the term—
(1) "business license" means a certificate, paper, or other item issued by the Secretary to any applicant in the business of manufacturing, importing, assembling, transferring, or selling of electronic, mechanical, or other devices;

(2) "possessor license" means a certificate, paper, or other item issued by the Secretary to any applicant owning, possessing, or otherwise having in his custody an electronic, mechanical, or other device.

(3) "electronic, mechanical, or other device" shall have the same meaning as that provided for under section 2510(5) of title 18, United States Code, except that, for purposes of this Act, the Secretary shall issue regulations excluding from such term any electronic, mechanical, or other device which the Secretary determines, on the basis of the design, size, and nature thereof, is primarily and ordinarily used for a purpose other than the overhearing of oral communications of others without their knowledge;

(4) "Secretary" means the Secretary of Commerce; and

(5) "person" means any individual, association, partnership, institution, corporation, or other entity, any officer, employee, or agent of the United States or any territory or possession thereof, or of any State or political subdivision thereof.

SEC. 502. (a) On and after the expiration of the one hundred and twentieth day following the date of the enactment of this Act, no person shall engage in the business of manufacturing, assembling, importing, transferring, or selling of any electronic, mechanical, or other device, if such device or component thereof has been or will be sent through the mail or transported in interstate or foreign commerce, unless such person has a valid business license issued to him in accordance with this title.

(b) The Secretary is authorized, upon application to him by an applicant in accordance with this title to issue to such applicant a business license, unless the Secretary determines, after a hearing, that such applicant has been convicted of a violation of chapter 119 of title 18, United States Code, that there is a substantial probability that such applicant is engaged, or is likely to engage, in conduct in violation of chapter 119 of title 18, United States Code, or that such applicant has knowingly submitted false or misleading information in connection with his application for such license or in connection with any other application, document, notice, or paper submitted pursuant to this Act.

(c) Any business license issued pursuant to this title may, after a hearing, be revoked or otherwise suspended by the Secretary if he determines that the holder of such license has been convicted of a violation of chapter 119 of title 18, United States Code, or has knowingly submitted false or misleading information in connection with his application for such license, or in connection with any other application, document, notice, or paper submitted pursuant to this Act.

(d) Applications under this section shall be submitted to the Secretary in such form as the Secretary shall provide. Any such

application shall contain, among other matters, the following:

(1) name and address of the applicant;
(2) business or trade name of the applicant;

(3) a complete description of the applicant's business or dealings insofar as such business or dealings involve electronic, mechanical, or other devices;

(4) the address of each location where the applicant conducts or will conduct business or other dealings involving electronic, mechanical, or other devices; and

(5) any other information or data which the Secretary may, by regulation, prescribe.

(e) Any business license issued pursuant to this section shall, unless revoked or suspended in accordance with this title, be valid for a period of twelve months. Each such license issued under this section shall be identified by a reference number issued by the Secretary. Any person holding a valid business license issued under this section shall notify the Secretary, in writing, of any changes in the information provided on the application for such license. Such notice shall be submitted prior to the expiration of the fourteen day period following such change.

(f) Any person violating the provisions of subsection (a) of this section shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

SEC. 503. (a) On and after the expiration of the one hundred and fiftieth day following the date of the enactment of this Act, no person, other than a person having a valid business license issued to him under this title, shall own, possess, or otherwise have in his custody, any electronic, mechanical, or other device, if such device or component thereof has been or will be sent through the mail or transported in interstate or foreign commerce, unless such person has a valid possessor license issued to him in accordance with this section.

(b) The Secretary is authorized, upon application to him by an applicant in accordance with this section, to issue to such applicant a possessor license, unless the Secretary determines, after a hearing, that such applicant has been convicted of a violation of chapter 119 of title 18, United States Code, that there is a substantial probability that the ownership, possession, or custody by such applicant of any electronic, mechanical, or other device would be unlawful under the provisions of section 2512 of title 18, United States Code, that there is a substantial probability that such applicant is engaged, or is likely to engage, in conduct in violation of chapter 119 of title 18, United States Code, or that such applicant has knowingly submitted false or misleading information in connection with his application for such license, or in connection with any other application, document, notice, or paper submitted pursuant to this Act.

(c) Any possessor license issued pursuant to this section may, after a hearing, be revoked or otherwise suspended by the Secretary if he determines that the holder of such license has been convicted of a violation of chapter 119 of title 18, United States Code, or has knowingly submitted false or misleading information in connection with his application for such license, or in connection with any other application, document, notice, or paper submitted pursuant to this Act.

(d) Applications under this section shall be submitted to the Secretary in such form as the Secretary shall provide. Any such application shall contain, among other matters, the following:

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- (1) name and address of the applicant;
- (2) business or trade name, if any, of the applicant;

(3) a complete description of the applicant's business or dealings, if any, insofar as such business or dealings involve electronic, mechanical, or other devices;

(4) the address of each location, if any, where the applicant conducts or will conduct business or other dealings involving electronic, mechanical, or other devices;

(5) a statement of the purpose to which the applicant intends to put the electronic, mechanical, or other device for which application is made;

(6) a statement as to whether the applicant has been denied a business license or possessor license under this title, or had any such license suspended or revoked;

(7) the number, description, and identification number of all electronic, mechanical, or other devices owned or possessed by the applicant, or in his custody at the time of such application and during the twelve month period preceding the date of such application, except that the requirement as to identification number shall not be applicable, with respect to any such device so owned, possessed or in the custody of any such applicant for any period prior to the date of expiration of the one hundred and twenty-day period following the date of the enactment of this Act; and

(8) any other information or data which the Secretary may, by regulation, prescribe.

(c) Any possessor license issued pursuant to this section shall, unless revoked or suspended in accordance with this title, be valid for a period of twelve months. Each such license issued under this section shall be identified by a reference number issued by the Secretary. Any person holding a valid possessor license issued under this section shall notify the Secretary, in writing, of any material change in the information provided on the application for such license. Such notice shall be submitted prior to the expiration of the fourteen day period following such change.

(f) In addition to information required under subsection (d) of this section, any law enforcement officer applying for a possessor license under this section shall submit to the Secretary the following:

(1) law enforcement agency by which the applicant is employed;

(2) the name and address of his commanding officer;

(3) if the applicant is a Federal law enforcement officer, such application shall contain assurances by the Attorney General or his designee to the effect that the applicant is of good standing and good character and whose assigned duties may involve the use of electronic, mechanical, or other devices;

(4) if the applicant is a State or local law enforcement officer, such application shall contain assurances by the chief law enforcement officer of the State or his designee to the effect that the applicant is of good standing and good character and whose assigned duties may involve the use of electronic, mechanical, or other devices.

(g) In the event that a law enforcement officer holding a valid possessor license ceases to be a law enforcement officer, such license shall be deemed revoked and of no force and effect, and the commanding officer of such law enforcement officer shall so notify the Secretary to that effect.

(h) Any person violating the provisions of subsection (a) of this section shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

TITLE VI—IDENTIFICATION;
REGISTRATION

Sec. 601. (a) On and after the expiration of the one hundred and twentieth day following the date of the enactment of this Act, no person engaged in the business of manufacturing, importing, or assembling electronic, mechanical, or other devices for which a license is required under this Act shall sell, transfer, distribute, or otherwise dispose of any such device so manufactured, imported, or assembled unless such device shall have affixed to it in such a manner that it cannot be readily removed, altered or obliterated, an identification number issued by the Secretary in accordance with this title.

(b) On and after the expiration of the one hundred and fiftieth day following the date of the enactment of this Act, no person shall own, possess, or otherwise have in his custody, transfer, or sell, any electronic, mechanical or other device unless such electronic, mechanical, or other device has affixed to it in such a manner that it cannot be readily removed, altered, or obliterated an identification number issued by the Secretary in accordance with this title.

(c) Upon approval by him of any application received from any person engaged in the business of manufacturing, assembling, importing, selling, or otherwise distributing electronic, mechanical, or other devices, or from any person owning, possessing, or otherwise having custody of any electronic, mechanical, or other device, for an identification number for purposes of this title, the Secretary is authorized to issue such number if he determines that such application contains such information as is required by, and is in compliance with, regulations issued by him for purposes of this title.

(d) Any person who sells, transfers, distributes, or disposes of any electronic, mechanical, or other device in violation of subsection (a) of this section or any person who owns, possesses, or otherwise has in his custody any electronic, mechanical, or other device in violation of subsection (b) of this section, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Sec. 602. (a) The Secretary is authorized and directed to establish and carry out, and keep current, a program of registration of all electronic, mechanical, or other devices in the United States. Such program shall be established and carried out with a view to requiring each person (other than a person covered by subsection (b)), within sixty days following the date he acquires ownership, possession, or other custody of any electronic, mechanical, or other device, or within the one hundred and fifty day period following the date of the enactment of this Act, whichever last occurs, to register such electronic, mechanical, or other device with the Secretary.

(b) On and after the expiration of the one hundred and fiftieth day following the date of the enactment of this Act, no person engaged in the business of manufacturing, importing, or assembling of any electronic, mechanical, or other device for which a license is required under this Act shall sell, transfer, distribute, or otherwise dispose of any such device unless such device has been registered in accordance with subsection (a) of this section.

(c) Such registration shall be carried out on forms made available by the Secretary and containing, among other matters, the following:

(1) the identification number of the device;

(2) the name (including business or trade name, if any), address (including business address, if any) and number of the business license or the possessor license of the person so registering such device; and

(3) a complete description of the electronic, mechanical, or other device to be so registered.

(d) Any person who violates the provisions of subsection (a) or (b) of this section shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

TITLE VII—SALE OR TRANSFER OF ELECTRONIC, MECHANICAL, OR OTHER DEVICE

Sec. 701. (a) On and after the expiration of the one hundred and fiftieth day following the date of the enactment of this Act, no person engaged in the business of manufacturing, importing, or assembling of any electronic, mechanical, or other device for which a license is required by this Act, and no person owning, possessing, or otherwise having in his custody, any electronic, mechanical, or other device for which a license is required under this Act, shall sell, transfer, distribute, or otherwise dispose of any electronic, mechanical, or other device, unless any such person has, not less than fourteen days prior thereto, notified the Secretary, in writing, concerning such intended sale, transfer, distribution, or other disposition. Such notice shall include, among other matters, the following:

(1) the name, address, and number of the business or possessor license issued under this Act of the person so selling, transferring, distributing, or otherwise disposing of such device;

(2) the name, address, and number of the business or possessor license issued under this Act of the person to whom such device is to be so sold, transferred, distributed or disposed of;

(3) the identification number of such device, obtained pursuant to this Act;

(4) a statement of the purposes for which such device is to be so used; and

(5) any other information which the Secretary may, by regulation, require.

(b) The Secretary may, within the fourteen day period following the receipt by him of any such notice of intention to sell, transfer, distribute, or otherwise dispose of any electronic, mechanical, or other device, issue an order prohibiting the carrying out of such intended sale, transfer, distribution, or disposition covered by such notice, if the Secretary determines that—

(1) the person to whom such electronic, mechanical, or other device is to be sold, transferred, distributed, or disposed of does not have a valid business license or possessor license issued pursuant to this Act;

(2) new information concerning such person referred to in paragraph (1) would be grounds for suspending, revoking, or not renewing any valid business license or possessor license held by such person;

(3) information in any such notice under subsection (a) of this section is false or incomplete;

(4) there is a substantial probability that such device to be so sold, transferred, distributed, or disposed of will be used for an unlawful purpose.

(c) In any case in which no order is issued pursuant to subsection (b) of this section with respect to any notice, the person submitting such notice shall, following the expiration of the fourteen day period following the submission of such notice, be authorized to carry out such sale, transfer, distribution or disposition covered by such notice.

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(d) Any person who sells, transfers, disposes, or disposes of any electronic, mechanical, or other device in violation of the provisions of subsection (a) of this section, or in violation of any order pursuant to subsection (b) of this section, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

TITLE VIII—DUTIES OF THE SECRETARY; AUTHORIZATIONS

Sec. 801. The Secretary shall take such action as may be necessary to assure that all information or other data obtained by him in connection with the issuance of business licenses, possessor licenses, the sale, transfer, distribution, or other disposition of electronic, mechanical, or other devices, including the identification numbers thereof and the registration with respect thereto, is kept in a central place and in such a manner as to facilitate the retrieval or abstraction of the aforementioned information and data except that all information and data concerning the issuance of a possessor license to a law enforcement officer may be kept confidential if requested by the commanding officer of the applicant. In any case involving such a request, such information or data may be made available to any appropriate court or law enforcement agency upon receipt of a proper request or order, but shall be so made available under such condition or conditions as the Secretary may impose to assure the confidentiality of such information and data.

Sec. 802. As soon as practicable following the date of the enactment of this Act, but in no event later than sixty days following such date, the Secretary shall issue such regulations as may be necessary to carry out the provisions of this Act.

Sec. 803. The Secretary shall, on not less than an annual basis, report to the Congress concerning the administration and operation of this Act. Such report shall include, among other matters—

- (1) the number of applications for business and possessor licenses received by the Secretary during the calendar year preceding the calendar year in which such report is submitted;
- (2) the number of such licenses issued during such period covered by such report;
- (3) the number of possessor licenses issued to law enforcement officers during such period covered by such report;
- (4) the number of electronic, mechanical, or other devices manufactured, assembled, or imported to the United States, and the number of sales, transfers, distributions, or other dispositions thereof during such period;
- (5) the estimated number of electronic, mechanical, or other devices in the United States during such period; and
- (6) such other information or data as the Secretary may, by regulation, require.

Sec. 804. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

TITLE IX—ALL PARTY CONSENT

Sec. 901. (a) Paragraph (a) of section 2511(1) of Title 18, United States Code, is amended by inserting immediately before the semicolon at the end thereof a comma and the following: "without the consent of all the parties to such communication."

(b) Paragraph (b) of section 2511(1) of Title 18, United States Code, is amended by inserting immediately after the word "communication" a comma and the following: "without the consent of all the parties to such communication."

(c) Section 2511(1) of chapter 119 of Title 18, United States Code, is amended by inserting immediately after paragraph (d) the following new paragraph:

"(e) willfully fails to report to a law enforcement official within a reasonable time any violation of this chapter;"

(d) Section 2510(4) of chapter 119 of Title 18, United States Code, is amended by deleting the period and inserting after the word "device" the following: "in a manner which allows someone not a party to such communication to hear or record the contents of such communication."

Sec. 902. Section 2511(2) of chapter 119 of Title 18, United States Code, is amended by striking out paragraphs (c) and (d) and inserting in lieu thereof the following:

"(c) It shall not be unlawful under this chapter for any person to intercept and record conversation over his own telephone or upon his own premises and to which he is a party, if—

"(1) notice is given to all other parties to such conversation that the conversation is being intercepted or recorded, or both; and

"(ii) the contents of any such interception or recording is not divulged to any person not a party to such conversation without the consent of all other parties to the conversation.

"(d) It shall not be unlawful under this chapter to record or otherwise tap any conversation in a public place which is otherwise readily audible without the use of any electronic, mechanical, or other device, and which takes place under circumstances such as not to afford a reasonable expectation of privacy, if such conversation is not recorded or taped for purposes either tortious or criminal."

Sec. 903. Section 2520 of Title 18, United States Code, is amended by adding at the end thereof the following new sentence: "Any criminal conviction obtained under this chapter shall be conclusive in any such civil action."

Sec. 904. (a) Chapter 119 of Title 18, United States Code, is amended by adding at the end thereof the following new section:

SEC. 2521. SANCTIONS

"(a) (1) Any person who willfully violates the procedural provisions of this chapter;

"(2) Any existing officer who willfully exceeds the authority of his warrant

"(3) Any person who willfully divulges any information obtained by lawful intercept under this chapter to any unauthorized person or agency; or

"(4) Any person who willfully violates any person's constitutional or statutory rights under this chapter shall be deemed in contempt of court and subject to a fine of \$10,000 or imprisoned for not more than five years, or both.

"(b) Any law enforcement officer who—

"(1) willfully violates any of the procedural provisions of this chapter;

"(2) willfully exceeds the authority of any warrant issued under this chapter in the course of executing such warrant; or

"(3) willfully violates the constitutional or statutory rights of any person under this chapter shall be fined not more than \$10,000 or imprisoned for not more than five years, or both."

(b) The section analysis of chapter 119 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

2521. Sanctions.

Sec. 905. The Communications Act of 1934, as amended, is amended by adding at the end of title II the following new section:

"Sec. 223. (a) Telephone and telegraph companies shall, upon the written request of a subscriber, furnish whatever service possible for the purpose of detecting any unlawful interception of communication carried on through the facilities of such common carrier. All such requests by subscribers shall

be subject to the provisions of chapter 119 of title 18, United States Code.

"(b) It shall be the affirmative duty of every telephone and telegraph company or officer or employee thereof to report to a law enforcement agency immediately upon discovery of any violation of the provisions of such chapter 119 discovered in the course of normal operations in response to a request of a subscriber as provided in subsection (a) of this section, or in any other manner. It shall further be the duty of any such telephone or telegraph company or officer or employee thereof to make available to law enforcement personnel any information relevant to such reports or discoveries as are needed for prosecutions under chapter 119 of title 18, United States Code.

"(c) Every telephone and telegraph company shall keep records and make annual reports to the Secretary. Such reports shall include—

"(1) the number of requests pursuant to subsection (a) of this section that it receives from subscribers;

"(2) the number of times pursuant to such requests or by other independent action on the part of such telephone or telegraph company—

"(A) an electronic, mechanical, or other device (as defined in section 2510 (5) of Title 18, United States Code), or evidence thereof, was discovered,

"(B) any person was arrested for violation of chapter 119 of Title 18, United States Code, and the disposition of such cases,

"(C) a cataloging of the types of devices discovered;

"(D) the number of such electronic, mechanical, or other devices discovered, and

"(E) the cost incurred by the reporting company in carrying out the requirements of this section."

Sec. 906. (a) Section 2511 (2) (a) of Title 18, United States Code, is amended by striking the period at the end thereof and inserting the following:

"; *Provided further*, That no operator of a switch board, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of wire communications, may intercept or mechanically or otherwise record any oral communication over such facilities for the purpose of protecting the rights or property of the carrier of such communication."

(b) Section 2516 (1) of Title 18, United States Code, is amended by redesignating subsection "(g)" as subsection "(h)", and adding a new subsection "(g)" as follows:

"(g) any offense involving fraud by wire under section 1343 of this Title."

NATIONAL STANDARDS NO-FAULT MOTOR VEHICLE INSURANCE ACT—S. 354

AMENDMENT NO. 497

(Ordered to be printed and referred to the Committee on Commerce.)

Mr. STEVENS. Mr. President, today I am submitting an amendment to the National Standards No-Fault Motor Vehicle Insurance Act (S. 354) which will help eliminate the fears that this legislation creates a Federal insurance regulatory bureaucracy, and which also responds to the views of those Senators on the Committee on the Judiciary who concluded last year that the bill's enforcement mechanism—title III—is of doubtful constitutional validity.

Mr. President, I have never been persuaded that this legislation would be, or